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RECENT DECISIONS

ADMINISTRATIVE LAW—EXCLUSION FROM SECOND CLASS MAIL—ESPIONAGE ACT.—The second class mail privilege of the relator was suspended for violations of the Espionage Act. The relator sued out a writ of mandamus against the Postmaster General praying that the privilege be restored. *Held,* Messrs. Justices Brandeis and Holmes dissenting, for the defendant. *U. S. ex. rel. Milwaukee etc. Publishing Co.* v. *Burleson* (1921) 41 Sup. Ct. 352.

Publications which answer certain formal requirements are classified as periodicals or newspapers, and are then entitled to second class mail privileges. (1879) 20 Stat. 359, U. S. Comp Stat. (1916) §§ 7304, 7306. By the provisions of the Espionage Act any mail containing seditious matter, as defined by that act, is denied the use of the mails. (1917) 40 Stat. 230, U. S. Comp. Stat. (Supp. 1919) § 1040la. The Postmaster General has no power to regulate the mails except that granted by statute. *Payne* v. *U. S. ex. rel. National Ry. Publisher Co.* (1902) 20 D. C. App. 581; *aff'd* (1904) 192 U. S. 602, 24 Sup. Ct. 849. The Espionage Act entitles the Postmaster General to reject each issue containing seditious matter from the mails altogether; but, there being no specific grant of authority to suspend the second class privilege, the Postmaster General seemingly exceeded his powers. This would accord with the opinions of the Attorney General. (1890) 19 Op. Atty. Gen. 667; (1908) 26 Op. Atty. Gen. 555, 565. Having satisfied the formal requirements which made it a newspaper, the relator, if entitled to the use of the mails at all, was entitled to the second class privilege, and by the suspension of this privilege there was an unjust discrimination in favor of other members of its class, and the privilege should have been restored.

ADMINISTRATIVE LAW—VALIDITY OF FEDERAL STATUTE IMPOSING DUTY UPON STATE OFFICIAL.—A writ of prohibition was applied for to restrain trial of a city police officer for agreeing to receive a bribe and not to make an arrest under the National Prohibition Law. *Held,* under U. S. Comp. Stat. (1916) § 1674 the petitioner could be placed under a legal duty to arrest violators of the National Prohibition Law. He could therefore be guilty of accepting a bribe. The writ will therefore be discharged. *Harris* v. *Superior Court* (Cal. 1921) 196 Pac. 895.

Within their respective spheres the federal and state governments are independent. See *Smith* v. *Short* (1867) 40 Ala. 385, 387. Thus Congress has no general power to enact police regulations operative within a state, *Ex parte Guerra* (Vt. 1920) 110 Atl. 224; nor to legislate as to what shall be evidence in a state court, see *Crews* v. *Farmers' Bank of Va.* (Va. 1879) 31 Grat. 348, 355; nor to provide punishment for violations of state laws justiciable only in the state court. *Butterfield* v. *United States* (C. C. A. 1917) 241 Fed. 556. Congress may impose no duty upon state officials. *Hoxie* v. *New York, N. H. & H. R. R.* (1909) 82 Conn. 352, 73 Atl. 754; *Rushworth* v. *Judges of Inferior Court of Common Pleas* (1895) 58 N. J. L. 97, 32 Atl. 743; *contra, Levin* v. *United States* (C. C. A. 1904) 128 Fed. 826; *Ex parte Rhodes* (1817) 12 Niles Weekly Register 264. A *contra* rule would permit overburdening state officials so as to render impossible the proper functioning of the state government. *Cf. The Collector* v. *Day* (1870) 78 U. S. 113, 125. But it is convenient for the federal government to be able to utilize such functionaries. Therefore some courts dodge the issue and hold that Congress may authorize the official to act as an individual. *Eldredge* v. *Salt Lake County* (1910) 37 Utah 188, 106

Pac. 939. This disregards the fact that he must act either under his state authority or else be appointed a federal officer as provided by the Constitution. But the majority hold that an act of a state official performed upon the authorization of Congress is valid so long as the state did not prohibit the same. *Holmgren* v. *United States* (1910) 217 U. S. 509, 30 Sup. Ct. 588. This ruling, though it violates the doctrine of complete independence of the state, safeguards the state by allowing it to avoid the federal statute, and furnishes the federal government additional administrative machinery.

BANKS AND BANKING—DISHONOR OF CHECKS—MEASURE OF DAMAGES.—Action by drawer against the defendant bank for wilful and wrongful dishonor of checks. *Dictum,* liability is for nominal damages only if the dishonor is the result of innocent mistake. *Wildenberger* v. *Ridgewood Nat'l Bank* (1921) 230 N. Y. 425.

Even if the wrongful dishonor results from accident or mistake, most jurisdictions raise a presumption of substantial damages. *Hilton* v. *Jesup Banking Co.* (1907) 128 Ga. 30, 57 S. E. 78; *Svendsen* v. *State Bank of Duluth* (1896) 64 Minn. 40, 65 N. W. 1086; *Schaffner* v. *Ehrman* (1891) 139 Ill. 109, 28 N. E. 917. The New York courts in the absence of proof of special damage allow a recovery of only nominal damages. *Clark Co.* v. *Mt. Morris Bank* (1903) 85 App. Div. 362, 83 N. Y. Supp. 447. But for a wilful dishonor they allow substantial damages. See *Davis* v. *Standard Nat'l Bank* (1900) 50 App. Div. 210, 216, 63 N. Y. Supp. 764. There seems to be no justification for this distinction since the basis of this tort action is damage to financial credit, like slander of a person "in the way of his trade." See *Rolin* v. *Stewart* (1854) 14 C. B. 595, 607; *Svendsen* v. *State Bank of Duluth, supra,* 42. This rule, however, is properly limited to cases of the dishonor of checks given by a merchant or trader, since where the drawer is not a merchant or trader the imputation of insolvency is not likely to damage him. *Third Nat'l Bank* v. *Ober* (C. C. A. 1910) 178 Fed. 678; see *Western Nat'l Bank* v. *White* (Tex. Civ. App. 1910) 131 S. W. 828, 830.

BILLS AND NOTES—ALTERATION OF INSTRUMENT TO CONFORM WITH TRUE INTENT.—In a suit on a renewal note, the defendant pleads no consideration since the original note was altered as to *per centum* and duration of interest. The alteration was made without the knowledge of the defendant, but expressed the intention of the parties. *Held,* for the plaintiff. *Born* v. *Lafayette Auto Co.* (Ind. 1921) 130 N. E. 149.

That the alteration in the principal case was material is clear. N. I. L. § 125(2). By § 124 of the Negotiable Instruments Law the maker's obligation is avoided by a material alteration, and the courts so hold. *Hoffman* v. *Planter's Nat'l Bank* (1901) 99 Va. 480, 39 S. E. 134. Before the Negotiable Instruments Law some authorities held that an alteration without fraudulent intent, *e. g.,* to correct a mistake or oversight, did not invalidate a note. *Duker* v. *Franz* (Ky. 1870) 7 Bush 273; *Wallace* v. *Tice* (1898) 32 Ore. 283, 51 Pac. 733; *contra, Sheeley* v. *Sampson* (1896) 5 Kan. App. 465, 46 Pac. 994; see *Newman* v. *King* (1896) 54 Ohio St. 273, 284, 43 N. E. 683. The court in the principal case seems to have disregarded the Negotiable Instruments Law in order to arrive at what it considered a just result. But this seems unnecessary, since courts make every effort to construe the facts so as to allow the original obligation to persist, and permit a recovery thereon, where the alteration is innocently made. See *Columbia Grocery Co.* v. *Marshall* (1914) 131 Tenn. 270, 271 *et seq.,* 174 S. W. 1108.